REMARKS

The Final Office Action mailed June 1, 2007 has been received and reviewed. Claims 1-6, 10-13 and 16-26 are pending with claims 18-22 having been withdrawn subject to an election requirement.

Claims 1-6, 10-13, 16, 17 and 23-26 stand rejected in view of cited art. Claims 1, 10, 23 and 26 are amended. The Applicant submits that the claims are now in condition for allowance for the reasons set forth hereinafter.

Rejection Of Claims 23-26 Under 35 U.S.C. § 112, Second Paragraph

Claims 23-26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner states that the words "non-utilitarian" and "utilitarian" used in claim 23 are indefinite because weights and prizes have utility. The rejection is overcome by amendment of claims 23 and 26 which, as amended, require the container to contain disparate products that are either food products or consumer products. Consumer products are defined in 15 U.S.C. § 2052 (Commerce and Trade) as follows:

> (a) For purposes of this chapter:
>
> (1) The term ""consumer product"" means any article, or component part thereof, produced or distributed
>
> (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or
>
> (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include——
>
> (A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer;

"Consumer product" is also defined by the Consumer Product Safety Commission as "A

product designed to be used by a consumer, as compared to one designed to be used in the process of making a consumer product. The end product." (See attached copy of definition from Google search.) Under this definition, weights inserted in a can to facilitate its vending is not a consumer product, but is merely an item used in the process of making the product. Further, by definition, a prize notification is merely a redeemable precursor to acquisition of the consumer product or end product that is usable by the consumer. The Applicant submits that the claim language is definite.

Rejection Of Claims 1-4, 6, 9-11, 13-14 And 16-17 Under 35 U.S.C. § 102(b)

Claims 1-4, 6, 9-11, 13-14 and 16-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nedblake, Jr. (US 5,664,671). The Examiner states, responsive to the Applicant's previous arguments, that Nedblake "inherently" includes an opening mechanism since it is the only way to access the sandwich located in the container. The rejection is respectfully traversed. Respectfully, the Examiner is unable to affirmatively cite any language or illustrated structural mechanism in Nedblake that constitutes an opening mechanism as claimed; the Examiner merely assumes that there must be a way into the lower container. Again, Nedblake describes that the non-beverage food-product enclosing portion (14) comprises a lower section (32) and an upper section (34) and at column 2, lines 7-12, states "[C]over 34 engages lower section 32 at joint 38 and presents upper surface 40 configured to mate with and engage base 20 as shown in FIG. 2. Lower section 32 and cover 34 cooperate to present lower container side walls 42, preferably configured to present the same diameter in cross-section as upper container side walls 18." (Emphasis added) In other words, the cover 34 and the lower section 32 which make up the non-beverage container merely engage with each other and it is the human hand which provides the opening mechanism to separate the cover from the lower section to access the sandwich in the container. Again, the Applicant submits that Nedblake does not

expressly or implicitly disclose an opening mechanism structure associated with the container, as claimed, but merely depends on the human hand to serve as an opening mechanism at best. The Applicant asserts that Nedblake does not anticipate claims 1-4, 6, 9-11, 13-14 and 16-17.

Rejection Of Claims 1-8 Under 35 U.S.C. § 102(b)

Claims 1-8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Feldmeier. The Examiner states, responsive to the Applicant's prior amendments and arguments, that the claims are "drawn to a vendable food product, thus the food product need only be capable of being vended" and that by the language of the claims, the "container must only be capable of being vended." The rejection is respectfully traversed. Claim 1 explicitly requires a container which is capable of being dispensed from the containerized beverage pathways of a vending machine. One of skill in the art understands that the containerized beverage pathways of a vending machine are those chutes (i.e., pathways) that enable a generally cylindrical beverage container, be that a can or bottle, to be dispensed from the interior of the vending machine to a delivery hopper where the consumer takes possession of the beverage container from the machine. It is clear to anyone of skill in the art, as well as those not skilled in the art, that the square container of Feldmeier would not be capable of being dispensed from the containerized beverage pathways of a vending machine structured to vend containerized beverages as claimed. The Applicant asserts that the combination of food products disclosed by Feldmeier are not vendable through containerized beverage pathways either. Feldmeier does not anticipate claims 1-8.

Rejection Of Claims 10-13 Under 35 U.S.C. § 102(b)

Claims 10-13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bezek, et al. (US 6,472,007) ("Bezek"). The Examiner asserts, responsive to the

Applicant's prior arguments, that the description provided by the Applicant in the present specification concerning the definition of what may constitute a sandwich product is anticipated by the disclosure in Bezek of crackers and dip as therefore constituting a sandwich. The rejection is respectfully traversed and the Applicant respectfully asserts that Bezek does not describe or even suggest a sandwich product as defined where a filler is provided in conjunction with an outer bread or bread-like structure to contain the filler provided. Chip and dips, or crackers and dips, are understood by all not to be equivalent to sandwiches as defined by the present specification. Claims 10-13 are not anticipated.

Rejection Of Claims 23-25 Under 35 U.S.C. § 102(b) (Sayre)

Claims 23-25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sayre (US 2,433,926). The Examiner asserts, responsive to the Applicant's previous arguments, that the container only need be vendable and must only be capable of being dispensable from the beverage pathways, and that Sayre discloses a food product and a utensil. The Applicant argues again that the claim requires at least two disparate products contained within the container. Sayre only teaches one product contained within the container, with the utensil located outside the container. Therefore, claims 23-25 are not anticipated.

Rejection Of Claims 23-25 Under 35 U.S.C. § 102(b) (Howes, et al.)

Claims 23-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Howes, et al. ("Howes"). The Examiner asserts, responsive to the Applicant's prior amendments and arguments, that Howes, et al. discloses a prize award being a non-comestible product. The rejection is overcome by amendment of claim 23 to clarify that the product-enclosing portion is non-concealed. Howes teaches a concealed or secret compartment for containing a prize. Claims 23-25 are not anticipated.

Rejection Of Claims 5 And 7 Under 35 U.S.C. § 103

Claims 5 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nedblake in view of Sanford. The Examiner states, responsive to the Applicant's prior arguments, that Nedblake discloses the invention, except for a teaching of a sandwich-like product enclosed in a wrapper and that Sanford discloses a wrapper to enclose a sandwich. The Examiner also states that Sanford "further teaches that the sandwich like product also comprises a wrapping to carry out the invention" and thus "Sanford provides the broad teaching of a container comprising two product [sic] wherein one of the products is a sandwich-like product that is wrapped." The Examiner further asserts that there would be reasonable expectation of success of using the teachings of Sanford to adapt a wrapper to the shape of the sandwich disclosed by Nedblake. The rejection is traversed. The Applicants again submit that the criteria for establishing a *prima facie* case of obviousness are not met because neither reference provides any suggestion or motivation for combining the teachings of Sanford with the Nedblake container. The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. MPEP § 2143.01. Nothing in Nedblake suggests enclosing the sandwich product in a wrapper since the sandwich is already in its own enclosure. Nothing in Sanford suggests wrapping a sandwich for placement in a container since the wrapper is the container. In fact, Sanford implicitly teaches away from using the wrapper with a follower device in a container as disclosed by Nedblake since it is impossible to fit the follower device into the container of Nedblake. Moreover, the explicit teaching of Sanford is to provide a packaging means for a sandwich that includes a follower or extruder sized comparably to the sandwich to facilitate extrusion of the sandwich from the package. The Examiner's suggestion that the Sanford teachings can be combined with Nedblake intentionally ignores the critical teaching of Sanford (i.e., the follower in the package) in order to make the Sanford package congruent with the Nedblake container. The

teachings of cited references may not be cherry-picked in order to construct an obviousness rejection. The Applicant submits that no *prima facie* case of obviousness can be established regarding claims 5 and 7 and the claims are not obviated.

Rejection Of Claim 26 Under 35 U.S.C. § 103

Claim 26 is rejected under 35 U.S.C. § 103 as being unpatentable over Howes. The Examiner states that Howes discloses a prize, not a prize notification, and that the claim limitations are thus met. The rejection is overcome by amendment of claim 26 which clarifies that the product-enclosing portion is not concealed, as is the specific teaching of Howes, et al. That is, Howes is expressly directed to providing a concealed or secret compartment that contains a prize hidden within so that the consumer is unaware that a prize is associated with the purchased product at the time of purchase. The teachings of Howes are, therefore, contrary to that which is claimed, namely a non-concealed product-enclosing portion. Since Howes specifically teaches away from that which is claimed, claim 26 is not obviated by the reference.

CONCLUSION

The Applicant submits that claims 1-6, 8, 9, 11-14, 16, 17 and 23-26 present patentable subject matter. Reconsideration and allowance are requested.

Respectfully submitted,

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Attachments

Consumer Product Design

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The creation of consumer products drives much of the world industrial economy. Consumer product usability provides a competitive advantage to companies in today's market place. Human factors deal with the application of human–system interface technology to enhance usability (Hendrick 1996) and it plays an important role in all phases of the consumer product design and development process. The label "ergonomically designed" is applied to a diverse array of products, from simple products, such as erasers and pens, to more complex products, such as computers and cars. Ergonomic design is used to denote improved product usability, whether the label is applied to hardware products, or to software. The label "ergonomically designed" is also used to differentiate between the depth and quality of thinking in the design. By definition, an ergonomically designed product should be one that is most appropriate to the task to be performed, that best fits the range of product users in terms of their dimensions, abilities, expectations and skills, and that is the easiest to use in an efficient way. Ergonomically designed products are not inherently more expensive to produce than nonergonomic counterparts. What truly differentiates ergonomically designed products is that they are the outcome of a systematic application of human factors principles and knowledge to the product design and development process.

1 DEFINITION OF A CONSUMER PRODUCT

The label "consumer product" is very broad, and it encompasses a diverse array of products, ranging from comparatively simple products, such as kitchen utensils, to much more complex technologies, such as a car. Figure 1 shows a useful taxonomy in which products are categorized along two dimensions, design complexity, which ranges from simple to complex, and cognitive demands, which range from low to high. Products shown in this figure are organized according to these two dimensions, for example, A television (TV) is a high complexity product in terms of its electronic design and manufacture, but it poses a low cognitive demand on users, often requiring little more than pressing an on/off switch, channel changer and volume control for successful operation. By way of comparison, a car is also a complex product, but driving a car places a high cognitive demand on users, and consequently users need to be trained in how to operate this product successfully. The fundamental goal of human factors in consumer product design is to reduce the cognitive demands as much as possible so that even the most complex of products is inherently easy to use by the broadest possible range of people.

2 PRODUCT DESIGN PROCESS

Consumer products are the outcome of a product design process. The length and complexity of this process varies according to the complexity of the product. The design process is less complex and faster for a simple product, such as a can opener, where the design process may occupy only a few weeks, than it is for a complex product, such as a car, where the process may include consideration of a much wider variety of human factors issues and extend over several years. Human factors specialists are not designers, and typically they work with designers and other professionals on a product design team providing information input as appropriate.

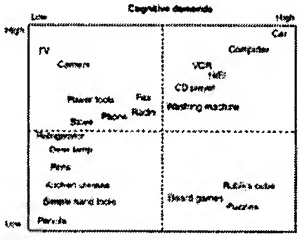

FIGURE 1 Taxonomy of consumer products.

ADVISORY OPINION

CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

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K. RYAN.

4 OCT 1974

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Comments Processed

Thomas G. Demling, Esquire
Varnum, Riddering, Wierengo & Christenson
666 Old Kent Building
Grand Rapids, Michigan 49502

Dear Mr. Demling:

This letter is in response to your correspondence of July 11, 1974 to Alan Schoem of this office in which you presented questions in hypothetical form regarding the Consumer Product Safety Act. All of your hypotheticals raise questions of jurisdiction which can best be answered by looking at the Act and its legislative history.

The primary purpose of the Consumer Product Safety Act is to protect the public against unreasonable risks of injury associated with consumer products. The term "consumer product" is defined in section 3(a)(1) of the Act (15 U.S.C. 2052) as meaning:

> "The term 'consumer product' means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, but such term does not include -- (A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer."

We believe that Congress did not intend that the term "consumer product" be construed narrowly to limit the scope of the Act. The House of Representatives Committee Report specifically admonishes that the definition is "intended to vest omnibus product safety authority in a single Federal agency" and "is broadly stated to include any article which is produced or distributed for sale to, or for the use, consumption, or enjoyment of a consumer in or around a household or residence, a school, in recreation, or otherwise." (H.R. Rep. No. 92-1153, 92d Cong., 2d Sess. 27)

ADVISORY OPINION

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Definitions of **Consumer Product** on the Web:

- A product designed to be used by a consumer, as compared to one designed to be used in the process of making a consumer product. The end product.
  www.sciteclabs.com/dictionary.html

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